

Claimant filed an Application for Hearing with the Division of Workers Compensation in September 1998, alleging injuries to both shoulders and both hands from operating an air knife in October 1997. Claimant later amended that application, alleging injuries to the left shoulder and both hands and a specific date of accident, October 1, 1997. At the regular hearing, the parties stipulated to an October 1, 1997 date of accident for claimant's alleged repetitive trauma injuries.

In the May 24, 2001 Decision, Judge Fuller denied claimant's request for workers compensation benefits, finding that claimant only temporarily aggravated a preexisting condition of rheumatoid arthritis. The Judge found, in part:

Claimant failed to meet her burden of proof that she suffered an accidental injury arising out of and in the course of her employment that resulted in any permanent impairment of function based on Dr. Huston's evaluation which this Court finds to be the most reliable due to his background in rheumatology. The Claimant suffers from rheumatoid arthritis that appeared while she was working, but was not caused by the work. That condition was temporarily aggravated.

Claimant contends Judge Fuller erred. Claimant requests the Board to modify the Decision and grant her a 15 percent permanent partial general disability based upon the functional impairment rating provided by her medical expert witness, Dr. Pedro A. Murati. Claimant argues that she has bilateral carpal tunnel syndrome, left cubital syndrome, and bilateral rotator cuff strains and/or tendinitis.

Conversely, respondent and its insurance carrier request the Board to affirm the Decision. They argue Dr. Kent A. Huston's opinion that claimant's symptoms were related to her rheumatoid arthritis, which was temporarily aggravated by work, is persuasive as Dr. Huston is a board-certified rheumatologist and was selected by the Judge to evaluate claimant as an unbiased expert. On page 4 of their brief filed with the Board, respondent and its insurance carrier acknowledge that claimant is entitled to receive an award for medical benefits for treating the temporary aggravation of the arthritis.

The only issues before the Board on this appeal are:

1. Did claimant's work activities permanently aggravate her rheumatoid arthritis?
2. Besides aggravating the rheumatoid arthritis, did claimant's work activities cause other injuries?
3. What is the nature and extent of claimant's injuries and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The Decision should be modified to award claimant authorized medical benefits for the reasonable and necessary medical treatment provided claimant for treating the temporary aggravation of her rheumatoid arthritis. The Decision should also be modified to award claimant unauthorized medical benefits, not to exceed the \$500 statutory maximum, for any unauthorized medical expense that was incurred. The remainder of the Decision should be affirmed.

2. Claimant began working for respondent in 1993 and was fired. Claimant recommenced working for respondent in 1994 and worked for the meat processing company until she was again fired in September 1998. Before October 1997, claimant noticed symptoms in her upper extremities. On approximately October 1, 1997, while performing her duties as an air knife trimmer, claimant's right shoulder popped as she was pulling meat with her right arm. After that incident, claimant also began experiencing symptoms in her left shoulder. According to claimant, the October 1, 1997 incident also aggravated other symptoms that she had been experiencing in her upper extremities.

3. At regular hearing, the parties stipulated that October 1, 1997, is the appropriate date of accident for the repetitive trauma injuries that claimant now alleges.

4. The principal issue in this claim is whether claimant sustained any permanent injury while working for respondent. According to the expert medical witness hired by claimant, Dr. Pedro A. Murati, as of April 1999 claimant had probable bilateral carpal tunnel syndrome, probable left ulnar cubital syndrome, and bilateral rotator cuff strains. As of March 2001, Dr. Murati believed claimant had probable bilateral carpal tunnel syndrome and bilateral rotator cuff strains or tears.

On the other hand, according to the neutral physician selected by the Judge, Dr. Kent A. Huston, as of August 1999 claimant had no evidence of carpal tunnel syndrome, left ulnar cubital syndrome, or bilateral rotator cuff strains. Instead, the doctor believed that those problems were related to claimant's rheumatoid arthritis, which had been temporarily aggravated by her work. In the August 20, 1999 letter from Dr. Huston to Judge Fuller, the doctor wrote, in part:

I performed an independent medical examination on Ms. Sylvia Abundiz on August 20, 1999 at your request. I evaluated her in regard to prior diagnoses of rheumatoid arthritis, bilateral carpal tunnel syndrome, left ulnar cubital syndrome, bilateral rotator cuff strains, and any relation of these conditions may have had to her work at the National Beef Company. . . .

. . .

. . . it is my opinion that she does have rheumatoid arthritis that first appeared while she was working and has now remitted with a reduction in her physical activity. I suspect that she would have more joint pain if she significantly increased her physical activity at this time and that is consistent with the history which she gave me. At this time I do not find evidence of carpal tunnel syndrome, left ulnar cubital syndrome or bilateral rotator cuff strains. I suspect all of those problems were related to rheumatoid arthritis. I don't believe that her job or work injury would have caused rheumatoid arthritis or this kind of musculoskeletal problem. Her work would temporarily aggravate her pain, and generally patients with rheumatoid arthritis are

unable to do manual labor jobs which she was performing. I do not believe there was a permanent aggravation of her condition by her work. . . .

5. The Board agrees with the Judge that Dr. Huston's opinions are credible, persuasive, and should be adopted. The doctor is an arthritis specialist and was brought into this claim as an unbiased medical expert. Accordingly, the Board concludes that claimant's work activities only temporarily aggravated her rheumatoid arthritis. Therefore, the denial of permanent partial disability benefits should be affirmed. As previously noted, the Decision should be modified to reflect that claimant is entitled to receive both authorized and unauthorized medical benefits for the medical treatment that was administered for the temporary aggravation of the arthritic condition.

6. The Board adopts the findings and conclusions set forth in the Decision that are not inconsistent with the above.

AWARD

WHEREFORE, the Board modifies the May 24, 2001 Decision to award claimant authorized medical benefits for the reasonable and necessary medical treatment that claimant received for the temporary aggravation of her rheumatoid arthritis. The Board also awards claimant unauthorized medical benefits, subject to the \$500 statutory maximum, for any unauthorized medical treatment administered claimant for her work-related symptoms. The Board affirms the remainder of the May 24, 2001 Decision and adopts the remaining orders as its own.

IT IS SO ORDERED.

Dated this ____ day of December 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Workers Compensation Director